

Court of Appeals, State of Michigan

ORDER

Anthony Smith v Nathaniel Lee Smith

Docket No. 264654

LC No. 05-507276-NO

Christopher M. Murray
Presiding Judge

Kurtis T. Wilder

Kirsten Frank Kelly
Judges

The Court orders, pursuant to MCR 7.205(D)(2), that the trial court's August 5, 2005 order setting aside the default is VACATED. A motion to set aside a default "shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed." MCR 2.603(D)(1). Here, the trial court failed to determine whether good cause was shown to set aside the default. Moreover, the statements of fact provided by defendants did not meet the requirements of a legally valid "affidavit," see *Holmes v Michigan Capital Medical Center*, 242 Mich App 703, 711; 620 NW2d 319 (2000), and the trial court failed to make any findings whether the facts alleged would constitute a meritorious defense upon the filing of a legally valid affidavit. Finally, the trial court failed to condition the setting aside of the default on the payment of costs, or indicate why the payment of such costs was not necessary. See MCR 2.603(D)(4). Accordingly, this matter is REMANDED for further proceedings, which is to include the trial court making the necessary findings under MCR 2.603(D)(1).

The Court further orders that the trial court's order denying plaintiffs' motion to strike is REVERSED since defendants' answer, affirmative defenses, and counterclaim were filed after the default was entered, they are legally void, and must be stricken. See MCR 2.603(A)(3).

This matter is REMANDED to the trial court for further proceedings consistent with this order. We do not retain jurisdiction.

This order shall have immediate effect. MCR 7.215(F)(2).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 20 2006
Date

Sandra Schultz Mengel
Chief Clerk